Lea Carr Manufacturing Company *and* Joint Board of Cloak, Skirt and Dressmakers Union, a/w International Ladies' Garment Workers' Union, AFL–CIO. Case 1–CA–29160

June 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge and an amended charge filed by the Union, on April 15, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Lea Carr Manufacturing Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On June 4, 1992, the General Counsel filed a Motion for Summary Judgment. On June 5, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated May 11, 1992, notified the Respondent that unless an answer was received by close of business May 22, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Boston, Massachusetts, has been engaged in the garment industry as a contractor sewing women's sportswear garments for other employers. During the calendar year ending December 31, 1991, the Respondent, in conducting its business operations, provided services valued in excess of $50,000 for Baron Abramson, an enterprise within the Commonwealth of Massachusetts, which in turn sold and shipped from its Massachusetts facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about 1988, the Union has been the exclusive collective-bargaining representative of the employees in the following unit which is appropriate for purposes of collective bargaining:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent but excluding all guards and supervisors as defined in the Act.

This recognition has been embodied in successive collective-bargaining agreements the most recent of which is effective from June 15, 1991, to June 15, 1994.

At all times since 1988, the Union has been the exclusive collective-bargaining representative of the unit employees based on Section 9(a) of the Act.

Pursuant to article XVIII of the 1991–1994 agreement, the Respondent is required to make payment to various employee benefit funds as follows: health and welfare benefits, the ILGWU retirement fund, and health services plan (the benefit funds). About May 30, 1990, the Respondent agreed in writing to pay pursuant to a weekly installment plan, all outstanding arrearages owed to the benefit funds. Since about October 10, 1991, the Respondent has failed and refused to pay all installments due pursuant to the agreement. Moreover, since about September 20, 1991, the Respondent has failed and refused to make any payments due to the benefit funds. These subjects related to wages, hours, and other terms and conditions of employment and are mandatory subjects of bargaining.

CONCLUSIONS OF LAW

By its failure to honor the terms of its May 30, 1990 agreement regarding arrearages to the benefit funds since October 10, 1991, and by its failure to continue in full force and effect since about September 20, 1991, all the terms and conditions of the 1991–1994 collective-bargaining agreement by failing to make payment to the benefit funds, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to honor its May 30, 1990 agreement by making all payments which it failed to make since October 10, 1991.

We shall also order the Respondent to make all contractually required benefit fund payments it failed to make since September 20, 1991.[1]

The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Lea Carr Manufacturing Company, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Joint Board of Cloak, Skirt and Dressmakers Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive representative of its employees in the bargaining unit by failing to honor the terms of its May 30, 1990 agreement regarding arrearages to the benefit funds since October 10, 1991, and by its failure to continue in full force and effect since about September 20, 1991, all the terms and conditions of article XVIII the 1991–1994 collective-bargaining agreement by failing to make payment to the benefit funds.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive representative of the employees in the following appropriate unit:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent but excluding all guards and supervisors as defined in the Act.

(b) Make all payments required pursuant to article XVIII of the collective-bargaining agreement including contractually required health and welfare benefits, the ILGWU retirement fund, and health services plan.

(c) Make all payments required pursuant to the May 30, 1990 agreement regarding arrearages to the benefit funds.

(d) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required benefit fund and agreement regarding arrearages payments.

(e) Preserve and, on request make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[1] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with the Joint Board of Cloak, Skirt and Dressmakers Union, a/w International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive representative of the employees in the following bargaining unit:

> All non-supervisory production, maintenance, packing and shipping workers employed by Lea Carr Manufacturing Company but excluding all guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to continue in full force and effect all the terms of our 1991–1994 agreement with the Union by failing to provide health and welfare benefits, the ILGWU retirement fund, and health services plan pursuant to article XVIII of the agreement.

WE WILL NOT fail or refuse to make payments pursuant to our May 30, 1990 agreement regarding arrearages to these benefit funds.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of our collective-bargaining agreement with the Union.

WE WILL make all contractually required payments pursuant to article XVIII of our 1991–1994 agreement with the Union including Health and Welfare Benefits, ILGWU retirement fund, and health services plan.

WE WILL honor our May 30, 1990 agreement regarding arrearages to the benefit funds by making all payments required pursuant to that agreement.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required payments for health and welfare benefits, the ILGWU retirement fund, and health services plan, as well as for our May 30, 1990 agreement for arrearages to these benefit funds.

LEA CARR MANUFACTURING COMPANY